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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,754	11/18/2003	Anne Vandette Reynolds	2742-1A	5270

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EXAMINER

SZUMNY, JONATHAN A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/715,754

Applicant(s)

REYNOLDS ET AL.

Examiner

Jon A Szumny

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

This is the first office action for application number 10/715,754, Hands-Free Stylist Stand, filed on November 18, 2003.

***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1: The assembly of figures 1-5;

Species 2: The assembly of figure 6;

Species 3: The assembly of figure 7;

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Eric Fincham on May 25, 2004 a provisional election was made without traverse to prosecute the invention of species 1, claims 1-3 and 8-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-7 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on November 20, 2002. It is noted, however, that applicant has not filed a certified copy of the 2,412,402 application as required by 35 U.S.C. 119(b).

### ***Claim Objections***

Claim 11 is objected to because of the following informalities:

In line 1, "rod-like" should be --rod-- so as not to cause confusion about what "like" is meant to encompass.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent number 5,350,144 to Lary.

Lary '144 discloses an assembly (figure 5) comprising a cradle (10, generally) having a lower portion (47) and an upper portion (32), a mounting means design end (lower end of 66, generally), and a connecting assembly (65, also, see column 4, lines 47-50) between the mounting means and the cradle that permits movement of the cradle in at least two/three mutually perpendicular planes, wherein the connecting assembly comprises a gooseneck.

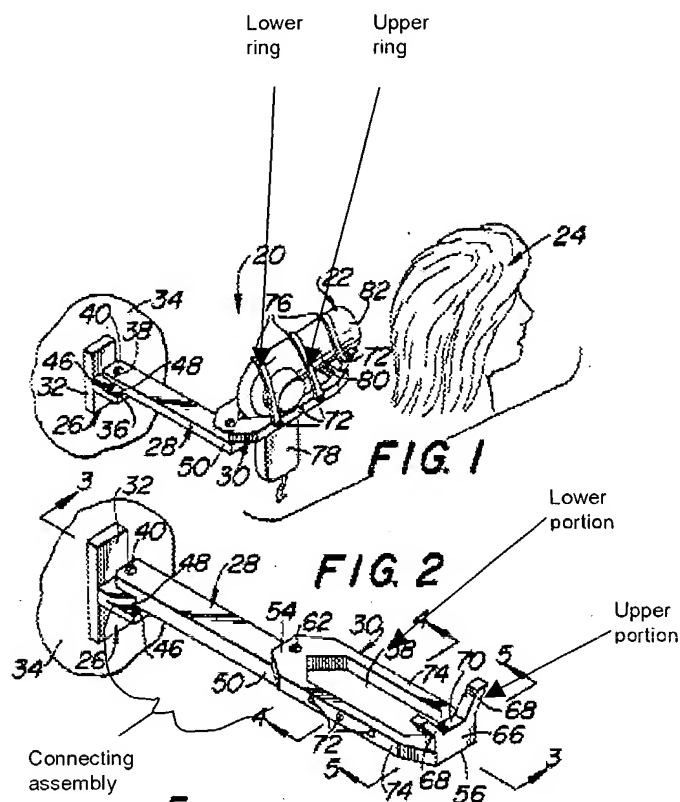
***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3632

Claims 1, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 4,225,106 to Eplan in view of U.S. Patent number 5,761,825 to Ammon et al.



Eplan '106 discloses an assembly (figure 1) comprising a cradle (20, generally) having a lower portion (above) and an upper portion (above), a mounting means design end (32), and a connecting assembly (above) between the mounting means the cradle, wherein the lower portion includes upper and lower rings (above, a "ring" is defined in Merriam Webster's Collegiate Dictionary - 10<sup>th</sup> Edition as being a "circular band for holding...", so clearly, these are "rings") wherein the upper portion is U-shaped, wherein the cradle is formed of rod-like members (above, a "rod" is defined in Merriam

Art Unit: 3632

Webster's Collegiate Dictionary - 10<sup>th</sup> Edition as being a "bar" or "slender bar", and a "bar" is defined as being "a straight piece that is longer than it is wide and...is used for...fastening", so clearly, all parts indicated as "rods" are in fact "rods").

However, Eplan '106 fails to specifically teach the connecting assembly to permit movement in at least two mutually perpendicular planes. Ammon et al. '825 reveals an assembly (figure 6) including a cradle (where "6" is pointing in figure 5), a mounting means design end (50) and a connecting assembly therebetween that permits movement in at least two mutually perpendicular planes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the connecting means of Eplan '106 with that of Ammon et al '825 so as to provide for a more adjustable assembly

### ***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 9, the prior art as applied against claim 8 failed to further specifically teach the upper ring to be larger than the lower ring.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sennott et al. '695, Duddy '317, Gettleman '313, Payne '154, McFarland '670, Andis '475, Bartholow '037, Miller '537, Barnes '861, Kidushim et al. '424 and British Patent number 529,686 and teach various holders including cradles, connecting assemblies and mounting means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306..

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
May 26, 2004